



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

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July 6, 2001

WORKFORCE INFORMATION MEMO #5-01

SUBJECT: On-The-Job Training (OJT) under the Workforce Investment Act (WIA)

REFERENCE: P.L. 105-220, Section 101(31)(A)(B)(C) and Section 122(h)(1) of the Workforce Investment Act of 1998; 20 CFR Part 652 et al., Subpart D, Section 663.430(a)(1) and 663.595; Subpart G, Section 663.700(a)(b)(c), 663.705, 663.710(a)(b)(c), and 663.730; Subpart D, Section 664.460(d); Subpart B, Section 665.200(b)(2), 667.268(a)(2), 667.640(b)(iii); Subpart C, Section 668.340(d)(2); Subpart E, 668.500(a)(5) of WIA Final Rules dated August 11, 2000

BACKGROUND: On-the-Job Training (OJT) provides WIA participants the opportunity to receive training while employed, and to be paid wages comparable to other employees in similar positions. For employers, OJT agreements with local workforce investment areas (LWIAs) provide an opportunity to be reimbursed a percentage of the wages they pay to WIA participants while they acquire additional job skills.

Enclosed are the state guidelines for formalizing OJT contractual agreements with employers.

ACTION REQUIRED: Please distribute this memo and its accompanying documentation to all staff responsible for placing WIA participants in training-related activities.

If you have questions, please contact Ms. Desiree Taggart, MIS/Policy Manager or your quality assurance liaison at (602) 542-3957.

Sincerely,

A handwritten signature in black ink that reads "Stan Flowers". The signature is written in a cursive, flowing style.

Stan Flowers
Acting Deputy Program Administrator
Workforce Development Administration

SF:PG:kds

Enclosure (1)

ON-THE-JOB TRAINING (OJT) POLICIES UNDER THE WORKFORCE INVESTMENT ACT (WIA)

On-the-job training (OJT) is occupational training provided by an employer in the public, private nonprofit, or private for-profit sector, to a paid WIA participant while he/she is engaged in productive work in a job that:

- Provides knowledge or skills essential to the full and adequate performance of the job.
- Provides reimbursement to the employer of **up to 50%** of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training.
- Is **limited in duration** as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the Individual Employment Plan (IEP) of the participant.
- Is intended to successfully prepare the individual for long-term, unsubsidized employment.

OJT CONTRACTS

Each OJT contract is designed for a particular individual and employer, and procurement of OJT contracts is conducted through noncompetitive negotiations.

OJT contracts may be written for eligible employed workers under the following conditions:

- (A) The above requirements are met.
- (B) The employee is not earning a self-sufficient wage as determined by the Local Workforce Investment Board (LWIB).
- (C) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the LWIB.

To facilitate internal and external monitoring, Local Workforce Investment Areas (LWIAs) *may* include the following elements in their OJT contracts:

- Job description and training outline
- Participant wage and hours (not to exceed 40 hours per week, reimbursed)
- Maximum amount of reimbursement
- Employer requirement to maintain time and payroll records to support reimbursement requests
- Duration of contract
- Provisions for contract monitoring, recouping overpayments, and contract termination for cause
- Disposition of tools and equipment
- Other provisions as required by the LWIA's contracting policies

Miscellaneous Contract Provisions:

1. The WIA participant is to have the same wage rate, including periodic increases, as trainees or employees who are in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable state or local minimum wage law.
2. Individuals in OJT or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.
3. Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are **not** considered as income for purposes of determining eligibility, and the amount of income transfer and in-kind aid furnished, under any federal or federally assisted program based on need, other than as provided under the Social Security Act (42 USC 301).
4. Employers may be reimbursed for costs incurred in providing classroom training and training-related supportive services (such as counseling) to WIA participants, in addition to wages paid by the employer for the time spent in these activities, *if the services are over and above those provided to regular employees*. These services are charged to the administrative cost category as part of reimbursement payments to the employer.
5. OJT contracts may be with temporary employment agencies when the OJT participant is treated as all other agency employees. OJT contracts **may not** be developed for probationary, seasonal, intermittent or other types of temporary employment.
6. LWIAs shall make efforts to assure that occupations and positions for OJT are those which afford the participant (adults, employed workers, and dislocated workers) the possibility of becoming self-sufficient above the poverty level.

Note: A *dislocated worker* who is employed at the time of WIA application may qualify for OJT if his/her current wage is less than 80% of the wage at the time of layoff.

7. Brokered OJT contracts, that is, those not written directly by the LWIA, are to clearly differentiate the services to be provided by the brokering contractor, the OJT employer, the LWIA, and other agencies and subcontractors with or without cost.
8. Limitations on OJT Contracts:

- a) Employer payments may not exceed the average of 50% of the total wages, excluding any benefits paid to each participant during the training period, including time spent in related classroom training, if wages are compensated by the employer.
- b) Compensation is made for no more than forty (40) hours of work in a given week and does not cover any overtime. The payments are for the extraordinary costs associated with the training of participants and the lower productivity of the OJT trainee. Employers are not required to maintain separate records to document these costs.
- c) LWIAs shall ensure that OJT contracts are not written with employers who have had two or more previous OJT contracts and exhibited a pattern of failing to provide OJT participants continued, long-term (6 months or longer) employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees.
- d) The LWIA determines what constitutes a pattern of failure and shall develop written policy on employer sanctions to include the time limits and methodology. In determining employer sanctions, the LWIA is to take into account whether or not the OJT participant quit voluntarily, was terminated for cause, or if the business conditions changed the employment opportunities with the employer.
- e) The employment of an OJT participant with the participant's previous employer in the same, similar, or an upgraded job is **prohibited**.
- f) Funds provided to employers for OJT must not be used to directly or indirectly assist, promote, or deter union organizing.

9. OJT Protections:

- a. On-the-job training contracts under this title shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with:
 - Continued long-term employment as regular employees.
 - Wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of job.

- b. An OJT participant shall not displace (including a partial displacement, such as a reduction in the non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
- c. A participant shall not be employed in a job if:
 - Any other individual is on layoff from the same or any substantially equivalent job.
 - The employer has terminated the employment of any regular employee or otherwise reduces the workforce of the employer with the intention of filling the vacancy so created with the participant.
 - The job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of the participation).
 - No funds will be used for on-the-job training for any business that has relocated, until 120 days after the date on which such business commences relocation, if the relocation of such business or part of a business results in the loss of employment for any employee at the original location and such original location is within the United States.

EQUIPMENT AND TOOLS

Equipment, tools, clothing, or uniforms required of an employee to perform the OJT occupation may be supplied by the LWIA, if the employer does not normally supply them. If the employer supplies these items and deducts the costs from the employee's salary, the LWIA may reimburse the employer to assist the participant. This cost is in addition to any reimbursement for wages and is charged to the direct training cost category.

Ownership of equipment and tools is determined by the LWIA. If these articles are expendable in a short period of time, they become the property of the participant. If other participants could use the tools or equipment in the future for the same or similar occupations, the ownership resides with the LWIA. The LWIA may wish to leave the tools and the equipment with the participant upon the successful completion of the training.

MONITORING OJT CONTRACTS

LWIAs shall monitor each OJT contract on-site for purposes of determining that payroll, time, and attendance records substantiate the amounts claimed for reimbursement and that training, wages, hours, benefits, and working conditions are provided in accordance with the contract.

YOUTH TRAINEES

The purpose of OJT and other work experiences for youth is to provide youth with the opportunities for career exploration and skill development. OJT for youth is not intended as a benefit for employers, although employers may, in fact, benefit from the activities performed by the youth.

The OJT is a planned, structured learning experience for a limited period of time, which enables a youth to acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment.

The OJT may include one or more of the following elements:

- Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS)
- Exposure to various aspects of an industry
- Progressively more complex tasks
- Internships and job shadowing
- The integration of basic academic skills into work activities
- Supported work, work adjustment, and other transition activities
- Other elements designed to achieve the goals of work experience.

Note: In most cases, OJT is not considered an appropriate work activity for youth participants under 18 years of age. However, the local program operator may choose to use this work activity when appropriate, based on the needs identified by a youth's objective assessment and Individual Service Strategy (ISS).

YOUTH EMPLOYER SELECTION AND STANDARDS

As with adult OJT contracts, the local program shall not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same work.

TRAINING OUTLINES

The skills specified in a training outline in an OJT agreement are both trainee and employer specific. The information on skills to be achieved by the participant are those identified by the objective assessment of an individual youth participant. The training outline is to include the methods of instruction (e.g. supervision on-site, use of manuals, classroom, or others). The length of training for each skill is stated in hours and how mastery of the skill is measured.

Training outline development may include using questions such as:

1. What is the skill required?
2. What proficiency is required?
3. What knowledge needs to be acquired to perform the skill?
4. How is the instruction to be performed?
5. What tools and equipment are needed (employer/trainee)?
6. How long does it take to learn this skill?
7. What product or service is to be produced?
8. How is the evaluation to be conducted?